IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3013 OF 2003

In

SUIT NO.3432 OF 1987

Moolchand Kaluchand Ranka & Ors. : Plaintiffs

V/s.

Manohar Vithal Telang & Ors. : Defendants

And

M/s.Parshwa Constructions : Respondent

...

Mr.C.S.Kapadia i/b. M.P. Bhatt for the respondent in support.

Mr.B.B.Saraf i/b. M/s.Kishore Thakordas & Co., for the plaintiffs to show cause.

Mr.D.H. Mehta i/b. M/s.Dravid & Associates for defendant No.1 to show cause.

...

CORAM : S.U. KAMDAR, J.

DATE : February 15, 2006.

P.C.

1. The present Notice of Motion is taken out by the respondent seeking prosecution against defendant No.1 under section 340 of the Code of Criminal Procedure read with sections 193 and 199 of the Indian Penal Code. It is the case of the respondent that there is a perjury

committed by defendant No.1 and, therefore, this Court should initiate action in that behalf.

2. The learned counsel for the respondent has drawn my attention to para 4 of the affidavit-in-support of the Notice of Motion in which it has been stated that there was a false denial by defendant No.1 in his affidavit-in-support dated 19.12.2002 in Notice of Motion No.3080 of 2001 in respect of execution of the Consent Terms dated 28.4.1988 and there is a further denial that he has conveyed or transferred his right, title and interest in respect of the property to the plaintiffs herein. It is the case of the respondent that this statement is false and, in fact, the said Consent Terms have been duly signed by defendant No.1 and he has also taken out an application by way of Misc. Petition for sanction of sale. On the aforesaid basis, he has contended that perjury should be sanctioned against defendant No.1.

3. Before I deal with the rival contentions on merits, I am of the view that the right of a party to initiate proceedings for perjury under section 340 of the Cr.P.C. read with sections 193 and 199 of the I.P.C. is only to the extent of bringing to the notice of the Court the necessary facts and then leave it to the Court whether such a sanction should be granted or not since the offence

is essentially against the Court. The provisions of perjury, inter alia, provide that no proceedings can be taken cognizance of unless the same is sanctioned by the Court before whom the said perjury is supposed to have been committed. There is no vested right in the applicant to insist for sanction of perjury proceedings as a matter of right. In the light of the above, the contention of both the respondent and the plaintiffs that they have vested right to insist for sanction of perjury proceedings is liable to be rejected.

4. Apart from the aforesaid, on merits, I am of the opinion that mere denial of execution of any document, including the Consent Terms, would not by itself give rise to an action for perjury in an adversary system as assertions and denials are a part and parcel of the legal proceedings and are normally required to be adjudicated by the Court which is trying the proceedings. It is only in cases where there is a serious patent false statement made by a party that would give a rise for taking action for perjury and sanctioning criminal prosecutions for the same. In my opinion, no such case really exists in the facts of the present case. In the light of that, there is no substance in the Notice of Motion.

5. The Notice of Motion is dismissed. There will be no order as to costs.

S.U. KAMDAR, J.